

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SALVADOR ARELLANES JIMENEZ and GENARO :	:	
CISNEROS, <i>individually and on behalf of others similarly</i> :	:	
<i>situated,</i>	:	
	:	20-CV-5454 (JPC)
Plaintiffs,	:	
	:	<u>DEFAULT JUDGMENT</u>
-v-	:	
	:	
G&J'S PIZZERIA LLC and GREGORIO VARIOS,	:	
	:	
Defendants.	:	
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JOHN P. CRONAN, United States District Judge:

This action was commenced on July 15, 2020. Dkt. 1. Plaintiffs filed an Amended Complaint on October 8, 2020. Dkt. 11. The docket reflects that both Defendant G&J's Pizzeria LLC (d/b/a G&J's Pizzeria) and Defendant Gregorio Varios were served on December 14, 2020. Dkts. 14, 15.

To date, Defendants have failed to answer the Amended Complaint or otherwise appear or move with respect to this action. On January 6, 2021, the Court scheduled a hearing for March 9, 2021 for Defendants to appear and show cause why an order should not be issued granting a default judgment against them. Dkt. 22. On January 8, 2021, the Clerk of the Court issued Certificates of Default as to both Defendant G&J's Pizzeria LLC (d/b/a G&J's Pizzeria) and Defendant Gregorio Varios. Dkts. 26, 27. Defendants then failed to appear at the March 9, 2021 show-cause hearing. After conducting a hearing with Plaintiffs' counsel, the Court expressed its intent to enter a default as to Defendants but deferred issuing a default judgment pending additional information from Plaintiffs on damages. In particular, the Court noted that the Amended Complaint fails to allege

that Defendants ever owned, operated, or control a business in addition to G&J Pizzeria, located at 188 East 104th Street, New York, New York, Dkt. 11 ¶ 2, yet Plaintiff Jimenez sought to recover damages for his work “at the 1st Avenue location” from February 1, 2017 through August 31, 2017, *id.* ¶ 44. Accordingly, the Court directed Plaintiffs to submit a revised damages chart excluding the time that Plaintiff Jimenez worked at that “1st Avenue location.”

The Court enters default as to Defendants on all causes of action in the Complaint. The Court also has reviewed the revised damages calculations provided by Plaintiffs on March 12, 2021. Dkt. 22. It is hereby ORDERED that Plaintiffs have judgment joint and severally against Defendants G&J’s Pizzeria LLC (d/b/a G&J’s Pizzeria) and Gregorio Varios in the amount of \$263,471.38, including (A) compensatory damages for unpaid minimum wages and overtime compensation in the amount of \$92,501.75, (B) liquidated damages for unpaid minimum wages and overtime compensation under the FLSA and NYLL in the amount of \$92,501.75, (C) unpaid spread of hours pay in the amount of \$17,094.00; (D) liquidated damages for unpaid spread of hours pay in the amount of \$17,094.00; (E) statutory damages for violations of New York Labor Law § 195(1) in the amount of \$10,000.00; (F) statutory damages for violations of New York Labor Law § 195(3) in the amount of \$10,000.00; (G) pre-judgment interest on unpaid minimum wages and overtime compensation calculated at the rate of 9% per annum to the date of judgment, totaling \$20,212.86 as of March 11, 2021; and (H) pre-judgment interest on unpaid spread of hours pay calculated at the rate of 9% per annum to the date of judgment, totaling \$4,067.02 as of March 11, 2021.

These damages calculations exclude any unpaid minimum wages and overtime compensation and for unpaid spread of hours pay, as well as corresponding liquidated damages, for Plaintiff Jimenez from February 1, 2017 through August 31, 2017, because Plaintiffs have not pleaded that Defendants owned, operated, or controlled the location where Plaintiff Jimenez


allegedly worked during that time period. In addition, for the reasons stated on the record during the March 8, 2021 show-cause hearing, the Court declines to award damages on Plaintiffs' tools of the trade claim, Dkt. 11 ¶¶ 139-41, as Plaintiffs have failed to provide any information that would allow the Court to determine actual damages related to that claim.

Plaintiffs also are awarded attorney's fees in the amount of \$4,155.00 and costs in the amount of \$437.80. This award of attorney's fees reflects a reduction in the requested amount for reasons also stated on the record during the March 8, 2021 hearing.

Finally, Plaintiffs are awarded post-judgment interest, as calculated under 28 U.S.C. § 1961. If any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4).

SO ORDERED.

Dated: March 17, 2021  
New York, New York

  
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JOHN P. CRONAN  
United States District Judge